

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

No: 05-CR- 1849 (JH)

DANA JARVIS,

Defendant.

DEFENDANT DANA JARVIS' REPLY TO THE UNITED STATES' RESPONSE TO
HIS MOTION FOR SEVERANCE

Defendant, Dana Jarvis, through counsel of record Joe M. Romero Jr. and Jody Neal-Post, hereby replies to the United States' Response, Doc. No. 809.

Discussion

The United States greatly clarified its trial intentions in its Response brief, such that a number of Mr. Jarvis' concerns underlying his request for severance have evaporated. For example, the United States affirms that it will not use statements of Ayla Jarvis made during a post-arrest if Mr. Jarvis' trial is not severed from co-defendant Ayla Jarvis' trial. *Response*, Doc. No. 809, p. 3. The United States affirmed its *Bruton* obligations and its commitment to careful redaction of any post-arrest statements it may attempt to use at trial, if such proffered statement of one defendant inculcates another. *Id.* at 3-4. Additionally, the United States "will not attempt to admit the unredacted statements of co-defendants inculcating the defendant." *Id.* at 4. Furthermore, the United States has agreed to a *James* hearing and will provide all defendants the co-conspirator statements it intends to use at trial, so there will be an appropriate time to revisit this matter of co-conspirator statements and severance at the conclusion of the *James* hearing. *Id.* at p. 3, n.2.

The United States further agrees to revisit the matter of severance, “if, at some later time, the defendant seeks to present particular facts on this issue [exculpatory co-defendant statements], the matter should be addressed at that time.” *Id.* at p. 8. At the present time, Mr. Jarvis accepts the United States affirmation that it “is not in possession of any co-defendant statements which are exculpatory to the defendant,” and Mr. Jarvis is asserting no claims to denied discovery. *See id.* at 8, and at n. 5.

The evidence in the case continues to expand and the United States continues to disclose evidence as it becomes available and in response to its obligations pursuant to the scheduling order. It is expected by undersigned counsel that should the Defendant learn of evidence he believes exists which would support of a renewal of this Motion to Sever, the United States will meet its obligations to provide such information in its possession. This Motion would then be renewed upon an appropriate factual showing to ensure the fairness of these complex proceedings.

WHEREFORE, Defendant Jarvis requests leave to revisit this Matter should evidence come to light providing appropriate grounds for renewal of this Motion, in keeping with the obligations of the United States to seek justice while this Court ensures a fundamentally fair proceeding.

Respectfully submitted:

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I hereby certify that on January 25, 2007,
I filed the foregoing pleading electronically through
The CM/ECF system, which caused counsel of
record for the United States to be served by
electronic means.

Electronically filed 1/25/07

Joe M. Romero, Jr.